

REMARKS

Reconsideration and allowance are respectfully requested.

Prior to entry of this amendment, claims 1-10 were pending in the application.

By this amendment, claims 1-10 have been amended and a new claim 11 has been added.

In particular, it is to be noted that no new matter has been added in amending the present set of claims.

Claim 11 discloses technical features originally disclosed in claims 1, 3 and 4.

Claim Rejections - 35 U.S.C. 112

Original claims 1-10 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 and claim 2 have been amended in order to overcome the Examiner's objections. Therefore, the expressions which do not have sufficient antecedent basis have been amended accordingly.

Claim 1 has been amended in order to clarify some expressions which, in the Examiner's opinion, appear to be a literal translation into English from a foreign language.

Claim Rejections - 35 U.S.C. 103

Original claims 1-10 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Ito (US 4432496) in view of

Carta.

First of all, Applicant respectfully points out that it is not clear from the Office communication which document of Carta has been combined with Ito.

However, Applicant has considered document US 7159798 in the name of Carta, as written in the Notice of References cited by the Examiner.

Applicant respectfully traverses the Examiner's opinion about the non-patentability of the present application over Ito in view of Carta.

Indeed, Applicant agrees with the Examiner about the fact that Ito discloses some technical features of claim 1.

Ito does not disclose that the cylindrical wall on the screw cap is inserted between the air conduit and the liquid conduit, to create a mixing chamber. Moreover Ito does not disclose that the mixing chamber has a variable geometry and that the liquid conduit and the air conduit are obtained coaxially in a cylindrical body. Indeed, the mixing chamber (32) has a fixed volume defined by the wall of the liquid conduit (37) and by a porous element (31) closely fitted to the cylindrical portion (22) of the inner cap (20). Finally, the liquid conduit (37) of Ito is realized in an element separate from the cylindrical body in which the air conduit is realized. Therefore the liquid conduit and the air conduit are realized coaxially in two separate coaxial cylindrical bodies (see figure 1 of Ito).

Applicant agrees with the fact that Carta (US 7159798) discloses a cap with cylindrical wall to be inserted between the air conduit and the liquid conduit, to create a mixing chamber.

However, Applicant wants to point out that the mixing chamber created in the device of Carta has not a variable geometry, but it has a fixed geometry.

Moreover, it is not clear how a skilled person could obtain the claimed invention combining these two documents. Indeed, following the teaching of Carta, the screw-on cap (40) of Ito should be modified by adding a cylindrical wall projecting inside the nebulizer. Moreover, according to the teaching of Carta, the cylindrical wall should be inserted between the air conduit (22) and the liquid conduit (37), to create a mixing chamber. In other word, referring to figure 2 of Ito, the cylindrical wall should be inserted in the mixing chamber (32), in place of the porous element (31). But there is no indication that would prompt the skilled man to remove the porous element (31). Indeed, if the porous element is removed, the device of Ito does not function any longer. The porous element allows the creation of the foam.

Besides, as well visible from figure 2 of Ito, the mixing chamber (32) is closed above by the frusto-conical portion (23) of the inner cover (20), except for a discharge port (25), through which clearly a cylindrical wall cannot be inserted! Therefore, in order to insert the cylindrical wall between the liquid conduit and the air conduit, the skilled man should cut the frusto-conical

portion (23) and should remove the upwardly tapered bar-shaped plug (24) which closes the jet nozzle (42) when the outer cover (40) is completely screwed onto the inner cover cap (20). But nowhere there is the suggestion of cutting a piece of the inner member (20).

Moreover, if the plug (24) is removed, the jet nozzle would remain always open and therefore the resulting device would not present a tip cap able to be inserted into the central exhaust orifice whilst the screw-on cap is screwed onto the cylindrical body, until sealing the nebulizer, as claimed in original and in amended claim 1.

Moreover, even if the screw-on cap of Ito could be modified as suggested by Carta, the mixing chamber of Ito would not be defined by a portion of the screw-on cap, by a portion of the liquid conduit and by the cylindrical wall, but only by the cylindrical wall and by the liquid conduit.

Therefore, Ito cannot be combined with Carta.

Even if Carta discloses a cylindrical wall to be inserted between the air conduit and the liquid conduit, to create a mixing chamber, this features cannot be combinable with the device shown by Ito with a reasonable expectation of success.

This contravenes the second of the three basic criteria to establish a prima facie case of obviousness ("There must be a reasonable expectation of success").

Therefore, claim 1 is not obvious over Ito in view of Carta.

Amended claim 1 is therefore new and inventive, and so it is considered to be patentable.

Since claims 2-10 depend upon new and inventive claim 1, they are felt to be patentable too.

New claim 11 is also new and inventive.

Indeed, claim 11 discloses all the technical features already disclosed in claim 1. Therefore the same argumentation applied previously for claim 1, can be applied also for supporting the patentability of claim 11.

Moreover, claim 11 also discloses mutual contrast means, provided on the internal counter-thread of the screw-on cap, which prevent the complete unscrewing of the screw-on cap from the cylindrical body. This mutual contrast means are constituted by one anti-unscrewing tab fastened tangentially to the cylindrical body and by an abutment, obtained inferiorly in the screw-on cap to serve as an abutment for the anti-unscrewing tab.

Neither Ito, nor Carta show, teach or suggest this kind of unscrewing means. Indeed, Ito shows an annular bulge (28) which prevents the outer cap to be disengaged from the inner cap. However this annular bulge is completely different from the disengaging system disclosed by the present application.

In view of the above, claim 11 is considered to be new and inventive and therefore it is felt to be patentable.

Conclusion

All matters having been addressed above and in view of the pending claims and remarks, Applicant respectfully requests the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Applicants' counsel remains ready to assist the Examiner in any way to facilitate and expedite the prosecution of this application.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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